

**Letter of Findings Number: 09-1034P
Individual Income Tax-Penalty
For the Year 2008**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of the ten percent negligence penalty for late payment.

STATEMENT OF FACTS

Taxpayers file individual Indiana income tax returns as part year non-residents. In 2008, Taxpayers sold rental property in Indiana in what was intended to be a tax free "like kind exchange." However, due to a fraudulent investment arrangement, Taxpayers' property was not sold in a "like kind exchange," and Taxpayers also lost the proceeds from the sale because the proceeds were misappropriated by the intermediary conducting the sale. As a result, Taxpayers recognized a taxable gain on the sale of the real estate.

Taxpayers amended their 2008 individual income tax return to reflect this gain. Taxpayers paid the tax resulting from the gain; however, Taxpayers were assessed a ten percent negligence penalty for the late payment of the tax due. Taxpayers protested the penalty. Taxpayers did not request a hearing. This Letter of Findings is written based on the materials in the file.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayers protest the imposition of the ten percent negligence penalty on Taxpayers' failure to timely remit the full amount of the individual income tax on or before the due date for payment.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this instance, Taxpayers have established that the failure to timely pay the tax was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayers' protest is sustained.

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